

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

JOSHUA WADE CARTER,)	
)	
Plaintiff,)	
v.)	Case No. CIV-19-58-PRW-STE
)	
OFFICER CRONISTER, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff, a prisoner appearing *pro se*, has filed this action under 42 U.S.C. § 1983 alleging various violations of his constitutional rights. United States District Judge Patrick R. Wyrick has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

In accordance with that referral, the undersigned has entered a series of Orders in this case. Specifically, on August 21, 2020, the Court issued a *Second* Order to Show Cause to Mr. Carter because the time period allotted for service of process on Defendant Cronister had expired. As explained in the Court's Order, summons was returned unexecuted as to Defendant Cronister, with remarks indicating that the Adair County Sheriff's Office had no record of an Officer Cronister. *See* ECF No. 34. In response to the Court's Order to Show Cause, Plaintiff filed a "Motion to Cancel Court Cost and Return Paid Amount." *See* ECF No. 35. In this Motion, Plaintiff advised the Court that he is quarantined due to COVID-19 and does not have access to the law library or a lawyer to help attain information needed for service on the remaining Defendant. (ECF No. 35). As

a result, Plaintiff offered the Court two suggestions: (1) return the court fees he has paid thus far and dismiss the case or (2) appoint him an attorney to assist plaintiff in obtaining information to “fight case.” (ECF No. 35:2). Based on the Motion, the Court inferred that Mr. Carter cannot meet the Court’s service requirements. The Court then received 3 more partial payments and a notice to change address. *See* Docket Entries dated 10/13/2020, 11/13/2020, 11/30/2020 and ECF No. 36. Plaintiff’s change of address form provided an address to a private residence.

In light of Plaintiff’s presumed release from incarceration, the Court entered an Order (ECF No. 37) requiring the Plaintiff to supplement his financial information through completion of an updated motion for leave to proceed *in forma pauperis*. Plaintiff was ordered to provide, no later than January 4, 2021, all information regarding his current financial condition, including any employment, assets or monies obtained since his apparent release. Plaintiff was also provided additional time to again show cause as to why the claims against Defendant Cronister asserted in the Complaint should not be dismissed for failure to serve and failure to prosecute. Plaintiff’s deadline to show cause was set for January 4, 2021.

A review of the court file indicates that as of this date, the Plaintiff has failed to comply with this Court’s Orders, show good cause for his failure to do so, or request an extension of time to comply with the Court’s Order. In fact, Plaintiff has not responded to the Court’s order in any way. Further, there is no indication from the docket that

Plaintiff did not receive the Court's previous Order which was mailed to Plaintiff's address of record. *See* ECF No. 37 and Comment dated 12/14/2020; LCvR 5.6.(a).

THEREFORE, the undersigned finds that Plaintiff's failure to comply with the Court's Order, in light of the Court's right and responsibility to manage its cases, warrants dismissal of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n.2, 1162 (10th Cir. 2007) (*sua sponte* dismissal for failure to comply with Court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing actions without prejudice for failure to comply).

RECOMMENDATION

Based on the foregoing findings, it is recommended that this action be **DISMISSED without prejudice** for Plaintiff's failure to comply with this Court's orders and Plaintiff's "Motion to Cancel Court Cost and Return Paid Amount (**ECF No. 35**) should be **DENIED**.

NOTICE OF RIGHT TO OBJECT

Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **March 12, 2021**, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Plaintiff is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

STATUS OF REFERRAL

This Report and Recommendation terminates the referral in the captioned matter.

ENTERED on February 23, 2021.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE